REMARKS

The Applicant has carefully reviewed the Final Office Action mailed August 8, 2007 (hereinafter "*Office Action*") and offers the following remarks.

Claims 1-3, 10-12, 19, 26, 33, 45, and 46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,167,124 to *Johnson et al.* (hereinafter "*Johnson*") in view of U.S. Patent No. 7,043,644 B2 to *DeBruine* (hereinafter "*DeBruine*"). The Applicant respectfully traverses the rejection.

According to Chapter 2143.03 of the M.P.E.P., in order to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught by the prior art. The Applicant submits that neither *Johnson* nor *DeBruine*, either alone or in combination, teaches all the features recited in the pending claims.

More specifically, claim 1 recites a method for transporting digital files comprising, among other features, allowing other nodes to submit bids to transport a file "when a digital file is to be transferred over the network from a sending node to a receiving node." Claims 10, 19, 26, 33, 45, and 46 include similar features. The Applicant submits that neither reference, either alone or in combination, discloses that when a digital file is ready to be transported over a network, other nodes submit bids to transport the file. The Patent Office supports the rejection by alleging that *Johnson* discloses this feature at col. 3, lines 27-65 (see *Office Action*, page 13). Particularly, the Patent Office states *Johnson* discloses that a "carrier has excess capacity on a particular route at the time" which, according to the Patent Office, suggests to the "examiner that the bidding is during the communication" (see *Office Action*, page 13). The Applicant submits that the Patent Office is misinterpreting the reference. While *Johnson* does disclose the parenthetical referred to in the *Office Action*, this does not relate to submitting a bid at a time when a file is ready to be transferred over a network. Instead, this section simply refers to the fact that a bid rate for a carrier may be lower than the normal bid rate for the carrier because the timeframe within which the carrier is bidding has excess capacity (see *Johnson*, col. 2, ll. 59-65 and col. 3, ll. 27-29). However, the actual time when the carrier submits the bid is well before a time when a digital file is ready to be transferred over a network. Therefore, claims 1, 10, 19, 26, 33, 45, and 46 are patentable over *Johnson* in view of *DeBruine* and the Applicant requests that the rejection be withdrawn. Likewise, claims 2, 3, 11, and 12, which depend from claims 1 and

10 respectively, are patentable for at least the same reasons along with the novel features recited therein.

Claims 4-9, 13-18, 20-25, and 27-32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Johnson* and *DeBruine* as applied to claims 1, 10, 19, and 26, and further in view of U.S. Patent No. 6,295,294 B1 to *Odlyzko*. The Applicant respectfully traverses the rejection.

As mentioned above, claims 1, 10, 19, and 26, the base claims from which claims 4-6, 9, 13-15, 18, 20-22, 25, 27-29 and 32 respectively depend, are patentable over *Johnson* in combination with *DeBruine*. In addition, *Odlyzko* does not address the previously noted shortcomings of both *Johnson* and *DeBruine*. As such, claims 4-6, 9, 13-15, 18, 20-22, 25, 27-29 and 32 are patentable over the cited references and the Applicant requests that the rejection be withdrawn.

Claim 7 recites that "if the specified quality of service is immediate delivery and the receiving node is off-line, uploading the file from the sending node to the server node, and delivering the file from the server node when the receiving node comes online." Claims 16, 23, and 30 include similar features. The Applicant submits that none of the references, either alone or in combination, teaches that if a specified quality of service is immediate delivery and the receiving node is off-line, uploading the file from the sending node to the server node, and delivering the file from the server node when the receiving node comes online. As correctly pointed out by the Patent Office, neither *Johnson* nor *DeBruine* discloses this feature. (See *Office Action*, pages 8 and 9). Similarly, *Odlyzko* does not disclose this feature. The Applicant has reviewed the reference and submits that nowhere does *Odlyzko* teach that if a quality of service is immediate delivery and the receiving node is off-line, uploading the file from the sending node to the server node, and delivering the file from the server node when the receiving node comes online. Furthermore, in addressing this argument, the Patent Office indicates that claim 7 presents "a conditional limitation, if the condition is not met, the claim is not used" (see *Office Action*, page 13). The Applicant submits that whether or not a claim is conditional and, if the condition is not met, the claim is not used, is irrelevant to the patentability of a claim. Importantly, the Applicant submits that nowhere does the M.P.E.P. support the reasoning offered by the Patent Office. Accordingly, the Applicant respectfully requests that should the Patent Office maintain the reasoning submitted in the *Office Action*, the Patent Office point out where

exactly the M.P.E.P. or the case law states that if a condition in a claim is not met and the claim is not used, how this bears on the patentability of the claim. As such, for these reasons and the reasons noted above with reference to claims 1, 10, 19, and 26, claims 7, 16, 23, and 30 are patentable over the cited references and the Applicant requests that the rejection be withdrawn.

Claim 8, which depends from claim 1, recites "if the specified quality of service is scheduled delivery, then queuing file transmission until a scheduled time." Claims 17, 24, and 31, which depend from claims 10, 19, and 26, include the same features. The Applicant submits that none of the cited references, either alone or in combination, teaches that if a specified quality of service is scheduled delivery, then file transmission is queued until a scheduled time. As correctly pointed out by the Patent Office, neither *Johnson* nor *DeBruine* teaches this feature. (See *Office Action*, pages 8 and 9). Similarly, *Odlyzko* does not teach this feature. While *Odlyzko* does disclose transmitting network traffic having lower priority over channels having lower costs, *Odlyzko* does not teach queuing file transmission until a scheduled time if a specified quality of service is scheduled delivery. (See *Odlyzko*, col. 5, lines 32-34). Moreover, in addressing this argument, the Patent Office indicates that claim 8 presents "a conditional limitation, if the condition is not met, the claim is not used" (see *Office Action*, page 13). As detailed above, the Applicant submits that whether or not a claim is conditional and, if the condition is not met, the claim is not used, is irrelevant to the patentability of a claim. Therefore, in addition to the reasons noted above with respect to claims 1, 10, 19, and 26, claims 8, 17, 24, and 31 are patentable over the cited references and the Applicant requests that the rejection be withdrawn.

Claims 34-44 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Johnson* and *DeBruine* as applied to claim 33, and further in view of U.S. Patent No. 6,012,045 to *Barzilai et al.* (hereinafter "*Barzilai*"). The Applicant respectfully traverses this rejection.

As detailed above, claim 33, the base claim from which claims 34-40 and 44 depend, is patentable over *Johnson* and *DeBruine*. Moreover, *Barzilai* does not overcome the previously noted shortcomings of both *Johnson* and *DeBruine*. As such, claims 34-40 and 44 are patentable over the cited references and the Applicant requests that the rejection be withdrawn.

Claim 41 recites providing the offer as an entry on a web page that includes a name and size of a file and "a chosen quality of service." Claim 42 recites identifying in a bid a bidding node, and a predetermined price and a "quality of service for delivering the file." The Applicant

submits that the Patent Office has not established that the prior art discloses providing an offer as an entry on a web page to include a chosen quality of service nor identifying in a bid a quality of service for delivering a file. In maintaining the rejection, the Patent Office broadly cites to an eBay reference and indicates that the reference discloses a "way-back machine for ebay.com" (see *Office Action*, page 13). The Applicant has reviewed the reference and submits that nowhere does the eBay reference disclose or even suggest the feature of providing an offer as an entry on a web page which includes a chosen quality of service nor identifying in a bid a quality of service for delivering a file. At most, the eBay reference discusses receiving feedback as it relates to buyers and sellers who use eBay to buy and sell goods (see eBay reference, pages 42 and 43, for example). Thus, in addition to the reasons noted above with reference to claim 33, claims 41 and 42 are patentable over the cited references and the Applicant requests that the rejection be withdrawn.

Claim 43 recites choosing a bid "that matches the quality of service in the offer." The Applicant submits that the prior art does not teach choosing a bid that matches a quality of service in an offer. As stated above, the Patent Office broadly cites to an eBay reference and indicates that the reference discloses a "way-back machine for ebay.com in maintaining the rejection (see *Office Action*, page 13). The Applicant has reviewed the eBay reference and submits that nowhere does the reference disclose choosing a bid that matches a quality of service in an offer. At most, the eBay reference discloses the buying and selling of goods. However, according to the eBay reference, the buying and selling of the goods is completely independent of a bid that matches a quality of service in an offer. Thus, in addition to the reasons noted above with respect to claim 33, claim 43 is patentable over the cited references and the Applicant requests that the rejection be withdrawn.

The present application is now in a condition for allowance and such action is respectfully requested. The Examiner is encouraged to contact the Applicant's representative regarding any remaining issues in an effort to expedite allowance and issuance of the present application.

Respectfully submitted,

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